

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

DUDIE JAMES ROSE,

Plaintiff,

vs.

MICHAEL FLAIRTY, et al.,

Defendants.

8:12-CV-119

ORDER

The Court is in receipt of the plaintiff's notice of appeal (filing [86](#)). The plaintiff is a prisoner who was previously granted leave to proceed *in forma pauperis* (IFP) in this matter. Filing [13](#). A party who was permitted to proceed IFP in a district court action may proceed on appeal IFP without further authorization, unless the district court certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis. [Fed. R. Civ. P. 24\(a\)\(3\)\(A\)](#). The Court finds that because the plaintiff proceeded IFP in the district court, he may now proceed on appeal IFP without further authorization.

Pursuant to the Prison Litigation Reform Act, a prisoner plaintiff is required to pay the full amount of the Court's \$455.00 appellate filing fee by making monthly payments to the Court, even if the prisoner is proceeding in forma pauperis. [28 U.S.C. § 1915\(b\)](#). The Act "makes prisoners responsible for their filing fees the moment the prisoner brings a civil action or files an appeal." *In re Tyler*, [110 F.3d 528, 529 \(8th Cir. 1997\)](#). The appellate filing fee is assessed when the Court receives the prisoner's notice of appeal. *Henderson v. Norris*, [129 F.3d 481, 485 \(8th Cir. 1997\)](#).

Pursuant to [§ 1915\(b\)\(1\)](#), the plaintiff must pay an initial partial filing fee in the amount of 20 percent of the greater of the plaintiff's average monthly account balance or average monthly deposits for the 6 months preceding the filing of the complaint. Calculation of this amount has been complicated by the plaintiff's incarceration in different institutions during the last 6 months. But based on the records before the Court, the Court finds that the initial partial filing fee is \$28.90, based on average monthly deposits of \$144.51. *See* filings [93](#) and [94](#). In addition to the initial partial filing fee, the plaintiff must "make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account." [§ 1915\(b\)\(2\)](#). The statute

places the burden on the prisoner's institution to collect the additional monthly payments and forward them to the Court as follows:

After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid.

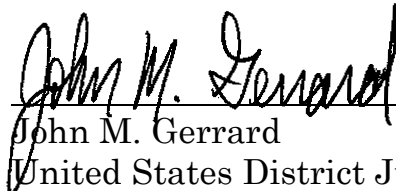
§ 1915(b)(2). Therefore, after payment in full of the initial partial filing fee, the remaining installments shall be collected pursuant to this procedure.

IT IS ORDERED:

1. The plaintiff shall pay an initial partial filing fee of \$28.90 by November 18, 2013, unless an enlargement of time is granted in response to a written motion.
2. The Clerk of the Court is directed to set a case management deadline of November 18, 2013.
3. After payment of the initial partial filing fee, the plaintiff's institution shall collect the additional monthly payments in the manner set forth in 28 U.S.C. § 1915(b)(2), quoted above, and shall forward those installments to the Court.
4. The Clerk of the Court is directed to send a copy of this order to the appropriate official at the plaintiff's institution and to the Eighth Circuit Court of Appeals.

Dated this 17th day of October, 2013.

BY THE COURT:



John M. Gerrard
United States District Judge